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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,795	04/14/2004	Daniel R. Feldmeier	77107	4678
48940 7590 04/29/2008 FITCH EVEN TABIN & FLANNERY 120 S. LASALLE STREET SUITE 1600 CHICAGO, IL 60603-3406				
EXAMINER CHIVUKULA, SURAJ				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
04/29/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/823,795

**Applicant(s)**

FELDMEIER ET AL.

**Examiner**

SURAJ CHIVUKULA

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 January 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-22 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The references listed in the Information Disclosure Statement filed on June 29, 2004 has been considered by the examiner (see attached PTO-326 form).

### ***Response to Arguments***

2. Applicant's arguments filed January 2, 2008, have been fully considered and are considered persuasive as to contentions (1) and (2) and not persuasive as to (3).
3. Applicant contends that (1) neither Castellanos nor Wells disclose a reclosable bacon package having a tray with a central base portion that merges with the generally upstanding tray sidewalls at respective locations below the tray member peripheral flange and second opposing sides of the central base portion which intersect the generally upstanding tray sidewalls at respective locations below the tray member peripheral flange, (2) neither Castellanos nor Wells disclose the tray having a bottom portion that intersects inclined portions on all sides, (3) neither Castellanos nor Wells disclose inclined base portions extending from the central base portion having a maximum width less than a maximum width of the central base portion such that side regions of the central base portion are disposed between the tray sidewalls and the inclined base portions.

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4. With regards to contentions (1) and (2), Examiner has included new art to use in support of the obviousness rejection. Ward discloses a bottom portion disposed between two inclined portions on opposing sides and the central base portion merging with the upstanding tray sidewalls, and second opposing sides at locations below the tray member peripheral flange (column 2 lines 10-19, Figure 1 and 2 #22, #22a, #24 and #24a).

With regards to contention (3), Castellanos teaches each inclined base portion with a width less than the width of the central base portion (Figure 7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the width of the inclined base portion to support the meat products while at the same time allowing the meat to sit flat. This argument is not persuasive toward and the rejection is maintained.

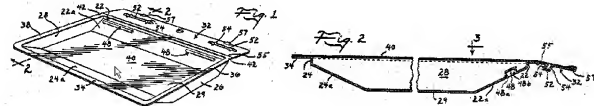
### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward et al. (US 3371848) in view of Castellanos et al. (US 7172779).

Regarding claims 1 and 19, Ward discloses a package for sliced bacon which is made of a plastic resin material, having sidewalls, flange, and endwalls rising upwardly from a bottom, and a cover member. The sidewalls have inclined lower portions (column 2 lines 10-25). Ward discloses an interfitting means which provides a snap-type retention (column 3 lines 10-15). Ward discloses a plurality of protuberances frictionally engageable with opposite protuberances (column 6 lines 20-23). Ward discloses a generally transparent cover (column 5 lines 44-46). Ward discloses a bottom portion disposed between two inclined portions on opposing sides and the central base portion merging with the upstanding tray sidewalls, and second opposing sides at locations below the tray member peripheral flange (column 2 lines 10-19, Figure 1 and 2 #22, #22a, #24 and #24a).



7. Regarding claims 6-9, Ward discloses a plurality of protuberances frictionally engageable with opposite protuberances (column 6 lines 20-23), the interfitting means on the container being on the flange or sidewalls (column 5 lines 25-29).
8. Regarding claims 10-11, Ward discloses the incline angle of 10 degrees (column 3 lines 39-41).

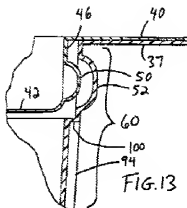
9. Regarding claims 13, 18, and 21, Ward discloses forming a heat seal between tray member flange to cover member flange to have a rupturable interface (column 6 lines 49-53).

10. Regarding claim 14, Ward discloses forming a cover member with sheets of material that could be of a flexible thermoplastic material (column 5 lines 39-45).

It should be noticed that Ward fails to disclose the tray member or cover member having transparency of a particular percentage, the tray member comprising a transparent or opaque plastic, both the tray member and cover comprising a transparent plastic, the incline angle in the range of about 20 to about 40 degrees, the inclination angle of one of the inclined portions being about 3 degrees to about 10 degrees less than the inclination angle of the other inclined base portion, the inclined base portion with a width less than the width of the central base portion, a cover and tray member made from a multilayer plastic film, the sealant layer comprising a multi-film sealant construction, and flushing the tray member with inert gas.

11. Castellanos teaches a tray member having transparency properties to permit inspection (Detailed Description (24)). It would have been obvious to one of ordinary skill in the art at the time the invention was made for the tray to be made of an opaque plastic for those instances where one wished to hide part of the contents as it may not be appealing.



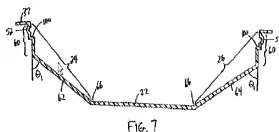


15. Castellanos teaches an oblique angle for the inclined ramp sections (Figure 7, claim 1) with decline angles of ramp sections between 55 degrees and 75 degrees translating to incline angles of between 35 degrees and 15 degrees. Castellanos teaches a difference in inclination angles between the two base portions of 0 degrees to 20 degrees (Detailed Description of Preferred Embodiments (46)). It would have been obvious to one of ordinary skill in the art at the time the invention was made for the package to have inclination angles in the range from about 20 degrees to about 40 degrees and a difference, in inclination angles, between the two base portions of about 3 to about 10 degrees.

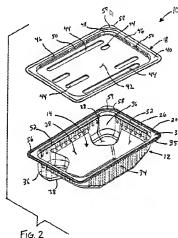
16. Castellanos teaches each inclined base portion with a width less than the width of the central base portion (Figure 7). It would have been obvious to one of ordinary skill in the art at the time the invention was made to vary the width of the inclined base portion to support the meat products while at the same time allowing the meat to sit flat.



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17. Castellanos teaches forming a heat seal between tray member flange to cover member flange to have a rupturable interface (Figure 2 #37 and #40, claim 20).



18. Castellanos teaches use of a moldable film (claim 27) formed by thermoforming (Detailed Description of Preferred Embodiments (24)).

19. Castellanos teaches the food package as being gas flushed (Detailed Description of Preferred Embodiments (57)).

20. Ward and Castellanos are related to packages for holding sliced foodstuffs with inclines and engageable cover members with flange tray members. One wishing to solve the problem of a tray with transparency and opacity attributes, having a bottom portion disposed between two inclined portions on opposing sides and the central base portion merging with the upstanding tray sidewalls, and second opposing sides at locations below the tray member peripheral flange would combine references. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the tear-away handheld food package, as disclosed by Ward, with the color attributes and gas flushing, as disclosed by Castellanos. The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suraj Chivukula whose telephone number is (571) 270-3471. The examiner can normally be reached on M-F 7:30am-5:00pm EST (1st Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call (800) 786-9199 (IN USA OR CANADA) or (571) 272-1000.

/Suraj Chivukula/  
Examiner  
Art Unit 1794

/Carol Chaney/  
Supervisory Patent Examiner, Art Unit 1794